

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

GILBERTO SANCHEZ,)
Reg. No. 17224-002,)
)
Plaintiff,)
)
) CASE NO. 2:20-cv-1073-RAH
v.)
)
JEFFERY KELLER, *et al.*,)
)
Defendants.)

ORDER

On January 26, 2024, the Magistrate Judge recommended that the Defendant's Motion to Dismiss should be granted due to the Plaintiff's failure to exhaust the Federal Bureau of Prison's administrative remedy process. (Doc. 27.) On February 5, 2024, Plaintiff Gilberto Sanchez filed Objections to the Report and Recommendation of the Magistrate Judge.

When a party objects to a magistrate judge's report and recommendation, the District Court must review the disputed portions de novo. 28 U.S.C. § 636(b)(1). The Court "may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions." Fed. R. Civ. P. 72(b)(3). De novo review requires that the District Court independently consider factual issues based on the record. *Jeffrey S. ex rel. Ernest S. v. State Bd.*

of Educ., 896 F.2d 507, 513 (11th Cir. 1990). If the party does not object to specific factual findings, the court reviews them only for clear error. *Garvey v. Vaughn*, 993 F.2d 776, 779 n.9 (11th Cir. 1993).

Sanchez objects to the Magistrate Judge's determination that he failed to exhaust his administrative remedies because he did not submit an appeal to the Central Office. Sanchez attached to his Objections an appeal he had previously submitted to the BOP Central Office in July or August of 2021. The problem, however, is that Sanchez filed the instant *Bivens* action on December 29, 2020. Thus, exhaustion was not complete before the filing of this lawsuit. *See Shivers v. United States*, 1 F. 4th 924 (11th Cir. 2021) (“The Prison Litigation Reform Act . . . requires prisoners to exhaust all available administrative remedies before bringing a *Bivens* claim. *See* 42 U.S.C. § 1997e(a).”). Moreover, Sanchez submitted the appeal to the Central Office well outside the time limit allowed under the *Bivens* administrative remedy process. *See* 28 C.F.R. §542.15(a) (30 days to appeal Regional Director’s response).

Upon this Court’s independent review of the record and consideration of the the Recommendation and Objections and for good cause, it is ORDERED as follows:

1. The Objections (Doc. 28) are OVERRULED;
2. The Recommendation (Doc. 27) is ADOPTED;

3. The Defendants' Motion to Dismiss (Doc. 20) is GRANTED; and
4. This action is DISMISSED without prejudice.

DONE on this the 14th day of February 2024.



R. AUSTIN HUFFAKER, JR.
UNITED STATES DISTRICT JUDGE